

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DOMINIC ESCALERA,	:	CIVIL ACTION NO. 1:15-CV-2132
	:	
Plaintiff	:	(Chief Judge Conner)
	:	
v.	:	
	:	
WARDEN LAUREL HARRY, et al.,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 7th day of November, 2016, upon consideration of the report (Doc. 68) of Magistrate Judge Susan E. Schwab, recommending the court deny defendants' motion (Doc. 54) to dismiss, wherein Judge Schwab opines that the administrative exhaustion defense raised by defendants is not properly before the court at this juncture, and it appearing that defendants did not object to the report, see FED. R. CIV. P. 72(b)(2), and the court noting that failure of a party to timely object to a magistrate judge's conclusions "may result in forfeiture of *de novo* review at the district court level," Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (citing Henderson v. Carlson, 812 F.2d 874, 878-79 (3d Cir. 1987)), but that, as a matter of good practice, a district court should "afford some level of review to dispositive legal issues raised by the report," Henderson, 812 F.2d at 878; see also Taylor v. Comm'r of Soc. Sec., 83 F. Supp. 3d 625, 626 (M.D. Pa. 2015) (citing Univac Dental Co. v. Dentsply Int'l, Inc., 702 F. Supp. 2d 465, 469 (M.D. Pa. 2010)), in order to "satisfy itself that there is no clear error on the face of the record," FED. R. CIV. P.

72(b), advisory committee notes, and, following an independent review of the record, the court in agreement with Judge Schwab's recommendation, and concluding that there is no clear error on the face of the record, it is hereby ORDERED that:

1. The report (Doc. 68) of Magistrate Judge Schwab is ADOPTED.
2. Defendants' motion (Doc. 54) to dismiss is DENIED without prejudice to defendants' right to reassert the administrative exhaustion defense on a more developed record.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania